

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TIMOTHY DESCUTIDO,

Plaintiff,

vs.

DIRECTV,

Defendant.

Case No. 2:12-cv-02090-MMD-GWF

ORDER

Application to Proceed in Forma
Pauperis (#1) and Screening of
Complaint

This matter comes before the Court on Plaintiff Timothy Descutido's ("Plaintiff")
Application to Proceed in Forma Pauperis (#1), filed on December 7, 2012.

BACKGROUND

Plaintiff's Complaint alleges he suffered employment discrimination by employer
DIRECTV. Plaintiff initially filed his claim with the Equal Opportunity Employment Commission
("EEOC") against Golden Harvest Enterprises, LLC ("GHE"). Plaintiff represents, however, that
after learning federal employment discrimination statutes only reach employers with at least 15
employees, he "filed for [a] second time" against DIRECTV. Plaintiff attached the EEOC's
Dismissal and Notice of Suit Rights dated September 13, 2012 (#1-1 at 2), which names GHE as
the respondent.

DISCUSSION

I. Application to Proceed In Forma Pauperis

Plaintiff filed this instant action and attached a financial affidavit to his Application and
Complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit
under section 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. Therefore,

1 Plaintiff's request to proceed in forma pauperis in federal court is granted.

2 **II. Screening the Complaint**

3 Upon granting a request to proceed in forma pauperis, a court must additionally screen a
4 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to
5 dismiss a case if the action is legally frivolous, fails to state a claim upon which relief may be
6 granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
7 1915(e)(2). Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain “ a short and
8 plain statement of the claim showing that the pleader is entitled to relief[.]”

9 Plaintiff does not plead any facts that indicate under which discrimination statute he seeks
10 relief, or that establish he suffered employment discrimination. Therefore, the Court finds Plaintiff
11 has not plead sufficient facts to state a claim upon which relief can be granted. Furthermore,
12 certain federal anti-discrimination statutes require Plaintiff to exhaust his administrative remedies
13 by, among other things, obtaining a right-to-sue letter from the EEOC. *See, e.g.*, 42 U.S.C. §
14 2000e-5(f)(1). After receiving the right-to-sue letter, the plaintiff may sue in federal or state court.
15 *Id.*; *see also Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 825-26 (1990). Here, Plaintiff has
16 attached a right-to-sue letter from the EEOC. Plaintiff's letter, however, permits him to pursue an
17 action against GHE only. Therefore, to the extent Plaintiff was required to obtain a right-to-sue
18 letter, it appears Plaintiff has not exhausted his administrative remedies as to the defendant he
19 names, DIRECTV.

20 In the event Plaintiff elects to proceed in this matter by filing an amended complaint, he is
21 informed that the Court cannot refer to a prior pleading to make his amended complaint complete.
22 Local Rule 15-1 requires that an amended complaint be complete in itself without reference to any
23 prior pleading. This is because, as a general rule, an amended complaint supersedes the original
24 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended
25 complaint, the original pleading no longer serves any function in the case. Therefore, in an
26 amended complaint, as in an original complaint, each claim and the involvement of each defendant
27 must be sufficiently alleged.

28 ...

IT IS FURTHER ORDERED that Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the issuance of subpoenas at government expense.

IT IS FURTHER ORDERED that Plaintiff's Complaint is **dismissed** without prejudice for failure to state a claim upon which relief can be granted.

DATED this 29th day of January, 2013.

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